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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,266	12/09/2003	Motoyoshi Sekiya	FUJZ 20.770	4696
26304 7590 03/19/2008 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER PASCAL, LESLIE C	
			ART UNIT 2613	PAPER NUMBER
			MAIL DATE 03/19/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,266

Applicant(s)

SEKIYA ET AL.

Examiner

Leslie Pascal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 3-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naganuma (JP2000-209160) in view of Fujita (JP10-173266) in view of Miyaji (JP2002-290331).

3. Naganuma (specifically Fig.14 and paragraphs [0062]-[0065]) describes a device having a gain equalizer (56) equalizing a gain gradient of an optical signal, a beam splitter (136) decoupling the optical signal, a coupler (142) decoupling the optical signal decoupled by the beam splitter into two, two optical bandwidth pass filters (144 and 146) whose pass bands are different from each other to which the optical signal decoupled by the coupler are respectively inputted, photo detectors (148 and 150) respectively receiving the optical signals having passed through the optical bandwidth pass filter, a calculation circuit (152) calculating a gain gradient based on an output signal of the photo detectors, and a control circuit (140) controlling the gain equalizer so that the gain gradient of the optical signal may assume flat, based on the output signal of the calculation circuit. The invention described in Naganuma does not specify that a spectrum within a modulation bandwidth per channel is monitored. Fujita teaches that the extent of bandwidth the gain equalization should be performed can be appropriately set by a person skilled in the art (see Fujita et al, JP 10-173264 if necessary), and a signal deterioration occurs when the signal spectrum within the channel is asymmetric is

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a well-known matter see e.g. paragraph [0006] of Miyaji). Therefore, monitoring the spectrum within the modulation bandwidth per channel in the invention described in the cited document 1 can be easily performed by the person skilled in the art.

With regard to claim: 2, it is well known to use a gain equalization circuit at either a transmitter or receiver side in order to provide a signal with less noise. It would have been obvious to use the equalization circuit at either location in order to improve the transmitted or received signal. With regard to claim 9, the placement of the means of Naganuma at an "arbitrary" intermediate node would have been obvious. It would have been obvious to compensate for the signal before a receiver, yet at a location close enough to the receiver in order to provide an adequate amount of compensation. With regard to claims 10-11, the compensator is controllable and therefore has variable pass characteristics.

4. Claims 3-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Pascal whose telephone number is 571-272-3032. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Pascal/
Primary Examiner
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